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ZONING HEARING EXAMINER

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The subject property is located at 1953 Mitchell Drive, Aberdeen in the Second Election District. The parcel is more specifically identified as Parcel No. 167, in Grid 3A, on Tax Map 63. The parcel contains approximately .597 acres, all of which is zoned R1 Urban Residential District.

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Ms. Barbara McGuire, one of the Applicants and owners of the property, appeared and testified that, at the time that she and her husband acquired the property, the accessory 30 by 60 foot garage and two run-down sheds were already existing on the property. At some point, a dog run was constructed on the property, on the north side near the center of the parcel. When the Applicants went to drill the well on the property, they had to move the dog pen. They reduced the size of the pen and relocated it along the back side of the property, adjacent to a wooded area, approximately 2 feet from the rear property line. According to Ms. McGuire, the dog pen and run has a cement floor surrounded by chain link fence, making it costly and difficult to move. In addition, if they had to relocate the pen, given the location of the other accessory structures on the property, they would have to move it to the center of the parcel, right where they wish to build their residential home. Ms. McGuire also testified that the current shed was built to replace two existing run down sheds that had been in that same location at the time the Applicants acquired the property. The shed is on a permanent foundation, located 2 feet from the side line, rather than the required 3 foot setback. The shed houses a lawn tractor and miscellaneous tools or gardening equipment and does not appear to cause any negative impact or detriment to the adjoining properties. Ms. McGuire testified that she and her husband are planning to build a home on the property and will meet all conditions imposed by the Department of Planning and Zoning and the Hearing Examiner. She indicated that she considers the property unique because of the existing accessory uses on the property in the absence of a dwelling and that she and her husband will actually be improving the lot and the surrounding neighborhood by building the home and gaining approval of the variances.

Mr. Bill McGuire, also an owner and Applicant, appeared and testified that he agreed with the testimony of Ms. McGuire with regard to the location of the dog pen and run, the location of the existing shed and their plans to construct a home on the property which would not be 50% greater than the size of the existing garage. He testified that it would cause significant hardship for them to move the shed and that if they were to try to move the dog pen, they would effectively be prevented from building a home on the property.

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He agreed that the property was unique because of the location and placement of the accessory structures on the property and he did not believe that there would be any negative impacts or detrimental effects as a result of the approval of the requested variances.

Mr. Bill Testerman, 1957 Mitchell Drive, Aberdeen, appeared and testified that he lives adjacent to the subject property and is brother-in-law to the Applicant, Bill McGuire. Mr. Testerman owned the property prior to the Applicants and built the garage that currently exists on the site. Mr. Testerman testified that he believes that the Applicants have improved the property and the neighborhood and thus he is in favor of approval of the requested variances. He believes that the variances will benefit all the neighboring properties.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the location and circumstances associated with this parcel are unique. This is a parcel zoned for residential use, with adjacent properties zoned residential as well as Light Industrial. The property contains only accessory structures at this time, but will contain a residential dwelling if the Applicants' requests for variances are approved. Mr. McClune stated that if the Applicants were required to relocate the dog pen, it would reduce the area available for construction of the proposed dwelling, resulting in practical difficulty and hardship for the Applicants. It was his testimony that the current locations of the shed and the dog pen did not adversely affect the neighboring properties, particularly since the adjacent land is densely wooded and zoned LI Light Industrial. With regard to the request for a variance from the maximum 15% impervious surface area, Mr. McClune testified that this property is located in the Chesapeake Bay Critical Area, approximately 700 feet from the waterline. There is no direct discharge from the property into the water. However, the Chesapeake Bay Critical Area Commission had reviewed this request and had notified the Department of Planning and Zoning that they were opposed to the request unless the Applicants were able to reduce the proposed impervious surface to an amount no greater than the amount currently existing. Mr. McClune stated that this issue has been discussed with the Applicants and they have agreed to remove some of the existing driveway and parking area and install porous brick pavers, which will enable them to maintain the existing percentage of impervious surface area with no net increase.

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Accordingly, the Department recommended approval of the variances with certain conditions as outlined in the Department's Staff Report.

Mr. Dossar Thompson, 6 Locust Road, Aberdeen, appeared in opposition to the requests. Mr. Thompson testified that he lives adjacent to the McGuire property. He also owns another two acres which is adjacent to the McGuire property. Mr. Thompson's primary objection is to the location of the dog pen. He testified that the dogs bark all the time, disturbing the neighborhood and his enjoyment of his property. He didn't feel that the dogs were appropriately housed in a residential neighborhood and were a threat to his safety. He testified that the dog pen was located 500 to 600 feet from his house. Mr. Thompson also believed that other people in the area were opposed to the requests. No other witnesses appeared to testify in opposition.

CONCLUSION:

The Applicants are requesting variances to the following five sections of the Harford County Code:

Section 267-26(C)(1), (2), (3) and (5)

Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

- (1) In the AG, RR, R1, R2, R3, R4 and VR Districts, the accessory use or structure shall neither exceed fifty percent (50%) of the square footage of habitable space nor exceed the height of the principal use or structure. This does not apply to agricultural structures, nor does it affect the provisions of §267-24, Exceptions and modifications to minimum height requirements. No accessory structure shall be used for living quarters, the storage of contractors' equipment nor the conducting of any business unless otherwise provided in this Part 1.*
- (2) No accessory use or structure shall be established on any lot prior to substantial completion of the construction of the principal structure.*

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- (3) *No accessory use or structure on any lot shall increase any impervious surface area beyond the maximum permitted...*

...(5) *Uses and structures.*

- (a) *Agriculture detached accessory structure: ten (10) feet from side or rear lot lines, except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement located on the lot.*
- (b) *Residential detached accessory structure: six (6) feet from any principal structure and three (3) feet from side or rear yard lot lines except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement.*
- (c) *Townhouses and zero-lot-line dwellings, detached accessory structure: six (6) feet from any principal structure or zero (0) feet from the side or rear lot line, except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement located on the lot.*
- (d) *Business, industrial, institutional and continuing care retirement community uses: same front, side and rear lot lines as required for the principal structure.*

Section 267-26(D)(2)

Accessory uses in agricultural and residential districts. The following accessory uses shall be permitted in agricultural and residential districts upon issuance of a zoning certificate, unless otherwise specified, in accordance with the following:

- ...(2) Pens, stalls or runs for animals shall not be located within fifty (50) feet of any adjacent residential lot line. Kennels shall be permitted only as special exceptions...***

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The specific requests made by the Applicants are: to allow the size of the existing garage to exceed 50 percent of the size of the proposed dwelling; to allow existing accessory structures to remain on the property without a principal building on the site; to allow an existing shed to be located within the required 3 foot setback (two feet existing); to allow an existing dog pen and run within the required 50 foot setback from the property line (two feet existing); and, to exceed the 15 percent maximum for impervious surface in the Chesapeake Bay Critical Area.

The undisputed testimony of the Applicants and the Department of Planning and Zoning is that the subject property is unique because of the location and circumstances of existing accessory structures, as well as the absence of an existing principal dwelling. The Applicants' proposal to construct a dwelling on the property will eliminate the need for the variance allowing the garage without a principal structure. The evidence demonstrated that denial of the variances relating to the shed, the dog pen and run and the garage size would cause practical difficulty and substantial hardship to the Applicants. While there was one witness who testified in opposition to the Applicants' requests, the only basis given for the objection was that the dogs' barking disturbed the witness and the animals themselves were a threat to his safety. Without addressing the merits of these objections, it is clear the opposition goes to the mere residence of the dogs on the neighboring property, not to the location of the pen on the site, nor to the nature of the other proposed variances. On the issues of the proposed variances themselves, there was no evidence to demonstrate that approval of the variances would cause substantial detriment to the adjacent properties or materially impair the purpose of the Code.

Therefore, it is the finding of the Hearing Examiner that the subject property is unique for the reasons stated by the Applicants and the Department in their testimony and, further, that approval of the variances to Sections 267-26(C)(1), (2), (5) and 267-26(D)(2) will not be substantially detrimental to adjacent properties or materially impair the purpose of the Code.

In regards to the requested variance to Section 267-26(C)(3), which refers to the maximum permitted impervious surface area, the subject parcel is located within the Chesapeake Bay Critical Area and is slightly larger than one-half acre in size. Accordingly,

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Section 267-41.1(F)(3)(b) applies to limit the maximum impervious surface to 15 percent of the lot. Thus, the Applicants' request for a variance to Section 267-26(C)(3), must also meet the test for a variance set forth in Section 267-41.1(H) of the Code. Variances from this Section "...may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant." In accord with the conditions set forth in Section 267-41.1(H)(1) through (8), the Hearing Examiner's findings are set forth below:

Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant. All applications for variances shall be reviewed by the Zoning Administrator for conformance with applicable provisions of this section, and a written report shall be provided to the Board of Appeals. In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:

- (1) *That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the critical area.*

The Hearing Examiner finds that denial of this variance request would deprive the Applicants of the right to construct a dwelling on a residentially zoned property.

- (2) *That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the critical area.*

The Hearing Examiner finds that the Applicants have the opportunity to and have agreed to reduce the existing amount of impervious surface and have agreed to mitigate for new impervious surface area, which will result in little or no net increase in the existing impervious surface. Thus, the Applicants will be provided with the same opportunity for the use of their property that is provided to other property owners within the Limited Development Area of the Critical Area.

- 3) *That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.*

When the Applicants acquired the subject property, the garage, driveway, parking pad

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and sheds already existed. Since the acquisition, the Applicants have replaced the two sheds with one utility shed and added a dog pen and run. Therefore, at the time the Applicants acquired the property, the impervious surfaces existing on the site already exceeded the maximum amount allowed under the Code. The Hearing Examiner finds that it was not the actions of the Applicants that created the conditions which led to the need for the variance.

- (4) *That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the critical area, and the granting of the variance will be in harmony with the purpose and intent of this section.*

The Hearing Examiner finds that there is no direct discharge from this site into an adjoining body of water. The Applicants have added significant landscaping to the property, including 26 trees. The Applicants intend to provide additional landscaping for a total of 2,345 square feet. The Applicants have agreed to provide a landscaping plan identifying the species and their location so that appropriate water quality benefits can be obtained.

- (5) *That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.*

It is the finding of the Hearing Examiner that there are no identified habitat protection areas on the site or adjacent to the site.

- (6) *That the growth allocation for the county will not be exceeded by the granting of the variance.*

The Hearing Examiner finds that the granting of this variance will not cause the growth allocation for the county to be exceeded.

- (7) *That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

Approval of this variance will bring the subject property into conformance with the uses on the surrounding properties. It is the finding of the Hearing Examiner that the granting of the variance will not be substantially detrimental the adjacent properties nor will it materially impair the purpose of the Code or the public interest.

- (8) *All applications for variance requests shall be filed in writing in accordance with Section 267-9(D) of the Zoning Code. Notice of all variance requests*

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and copies of applications filed in accordance with this section shall be sent to the Chesapeake Bay Critical Area Commission within ten (10) working days of filing with the Department of Planning and Zoning. A copy of the recommendation of the hearing examiner or of the Board in acting on the variance shall be promptly sent to the Commission.

The Hearing Examiner finds that the requirements of this subsection have been met and a copy of this recommendation shall be promptly sent to the Commission.

Based upon the findings set forth above, it is the recommendation of the Hearing Examiner that the requested variances to allow the existing accessory structures to be located on the lot without a principal dwelling, to allow the garage to be greater than 50 percent of the living area of the proposed dwelling, to allow the existing setback variances for the shed and the dog pen, and to allow the impervious surface area to exceed the 15 percent maximum be approved, subject to the following conditions:

- 1. The Applicants shall not increase the amount of impervious surface area on this property. In order to allow for the construction of the dwelling and sidewalks, an equivalent area of driveway and parking pad must be converted to non-impervious surface, such as porous brick pavers.**
- 2. The Applicants shall submit a detailed site plan showing all existing and proposed impervious surfaces, the material to be used for the driveway and parking area, and all existing and proposed landscaping (including species type and location designed to maximize water quality benefits) for review and approval by the Department of Planning and Zoning.**
- 3. The fence along the front property line shall be reduced to 4 feet in height.**
- 4. The garage shall be for the personal use of the Applicants and not for the use of contractor's equipment or commercial vehicles. It shall not be used in the furtherance of a business or other commercial venture.**

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5. The Applicants shall make all reasonable efforts to begin timely construction of a principal dwelling upon the site, in accord with all applicable regulations and building requirements.
6. The Applicants shall obtain all necessary permits and inspections.

Date MARCH 15, 2000

**Valerie H. Twanmoh
Zoning Hearing Examiner**